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CTIA
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

May 20, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington DC 20554

Re: Ex Parte Presentation
CC Docket # 96-115 (Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information)

Dear Ms. Salas:

On Tuesday, May 19, 1998, the Cellular Telecommunications Industry Association ("CTIA"), represented by Randall Coleman, and Clarke Garnett of Liberty Cellular, met with Karen Gulick, Legal Advisor, Commissioner Tristani's Office, regarding the above-referenced proceeding. The parties discussed CTIA's submission to the FCC in the matter of Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, in conjunction with the attached materials.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and its attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Cleveland Lawrence III

Cleveland Lawrence III

No. of Copies rec'd 0+1
List A B C D E

Customer Proprietary Network Information (CPNI)

In Sections 221 and 222 of the Telecommunications Act of 1996, Congress included new provisions that protect consumer privacy and govern a carrier's ability to use "Customer Proprietary Network Information" (CPNI). On February 26, 1998, the FCC released the *Second Report and Order* (*CPNI Order*) in its CPNI proceeding. While the focus of the FCC's *CPNI Order* was to apply the CPNI rules to incumbent LECs, the new rules sweep in all carriers, including commercial mobile radio services ("CMRS") carriers.

There are two provisions in the *CPNI Order* that are of particular concern to CMRS carriers. First, in paragraph 77, the FCC restricts CMRS carriers from using CPNI in connection with customer premises equipment ("CPE") and information services. And second, in paragraph 85, the FCC restricts carriers from using CPNI to attempt to retain, or, if necessary, "win back" customers who have chosen another service provider.

The CMRS market is characterized by increasing competition and the rapid introduction of new technologies and services. The FCC has encouraged these developments as serving the public interest. Now, however, the Commission has adopted rules regulating CMRS providers' use of CPNI that threaten and impair competition and the rapid introduction of new technologies and services. The new FCC rulemaking:

- makes unlawful longstanding wireless marketing practices that the Commission has found to be not only legal but pro-competitive.
- impairs bundling of mobile services and equipment, despite Commission policy that such bundling helps consumers, increases competition and promotes network buildout.
- undermines Commission policies to promote the deployment of spectrum-efficient digital technology by restricting the offering of digital equipment, features and services.
- grafts old landline-related regulatory distinctions onto CMRS, where they have never applied, and where they make no sense.
- imposes a flat restraint of trade, which frustrates the vigorous price competition and customer benefits that result when two or more carriers are vying for the same customer.

On April 24, 1998, the Cellular Telecommunications Industry Association (CTIA) filed with the FCC a request for deferral and clarification to the new rules governing the use CPNI, insofar as they apply to the provision of commercial mobile radio services. CTIA asked the Commission to:

- Defer, for 180 days, the effective date of these two rules insofar as they apply to CMRS. CTIA also seeks clarification of the order in two respects.
- Confirm that CPNI refers only to information about the type and amount of service customers purchase, not the names and addresses of customers themselves.
- Clarify that the new "win-back" rule would not apply until after a customer is no longer receiving service from its original carrier.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	

REQUEST FOR DEFERRAL AND CLARIFICATION

Michael F. Altschul
Vice President, General Counsel
Randall S. Coleman
Vice President for
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 785-0081

Its Attorneys

April 24, 1998

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REQUEST FOR DEFERRAL AND CLARIFICATION

The Cellular Telecommunications Industry Association ("CTIA")[1] hereby requests that the Commission defer for 180 days the effective date of new Sections 64.2005(b)(1) and (b)(3) of the rules governing the use of customer proprietary network information ("CPNI"), insofar as they apply to the provision of commercial mobile radio services ("CMRS"). CTIA also asks that the Commission's action on this request clarify these rules in two respects.

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[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership covers all CMRS providers, including 48 of the 50 largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

These new rules were adopted in the Second Report and Order in this proceeding.[2] Temporarily postponing the rules' effective date as to CMRS, and clarifying them, will serve the public interest by enabling CMRS subscribers to continue to benefit from pro-competitive practices that the new rules would otherwise soon prohibit. No party will be harmed by grant of this request. It will preserve the status quo while the Commission addresses petitions to reconsider the rules or to forbear from applying them in whole or in part to CMRS.

I. SUMMARY

The CMRS market is characterized by increasing competition and the rapid introduction of new technologies and services. The Commission has encouraged these developments as serving the public interest. Now, however, it has adopted rules regulating CMRS providers' use of CPNI that threaten and impair both developments. The rules drive a wedge through CMRS providers' longstanding integrated marketing efforts that will impede

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[2] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information, FCC 98-27, released February 26, 1998 ("Order"). A summary of the Order was published in the Federal Register on April 24, 1998.

consumers from learning about the very services the Commission has sought to foster.

Section 64.2005(b)(1) restricts CMRS providers' use of CPNI to advise their customers about wireless equipment and many wireless offerings. Section 64.2005(b)(3) prohibits carriers' use of a customer's CPNI in competing to retain or win back a customer. These rules:

- make unlawful longstanding wireless marketing practices that the Commission has found to be not only legal but pro-competitive.
- impair bundling of mobile services and equipment, despite Commission policy that such bundling helps consumers, increases competition and promotes network buildout.
- undermine Commission policies to promote the deployment of spectrum-efficient digital technology by restricting the offering of digital equipment, features and services.
- graft old landline-related regulatory distinctions onto CMRS, where they have never applied, and where they make no sense.
- impose a flat restraint of trade which frustrates the vigorous price competition and customer benefits that result when two or more carriers are vying for the same customer.

Section 222 of the Telecommunications Act of 1996 does not require these intrusive and anticompetitive rules. Nothing in Section 222 directs the Commission to restrict the integrated equipment and services CMRS providers have always offered to

customers, or to restrict CMRS providers' efforts to serve and retain them. Far from achieving Section 222's goal of regulating the use of CPNI consistent with customer expectations, the rules will subvert those expectations.

CTIA thus asks the Commission to defer, for 180 days, the effective date of these two rules insofar as they apply to CMRS. This will enable a more informed record to be developed, and will give the Commission time to respond to the petitions for reconsideration or other relief which CTIA and wireless carriers plan to submit. While the Order specified a compliance date of only 30 days following public notice, Section 222 itself sets no deadline. Thirty days is clearly insufficient for the Commission to develop the proper record to address the unique issues raised in applying Section 222 to CMRS -- issues that the Order did not consider. The current deadline would thus force wireless providers to disrupt their pro-competitive marketing efforts, even though they may ultimately obtain relief through reconsideration or forbearance.

CTIA also seeks clarification of the Order in two respects. First, the Commission should confirm that CPNI refers only to information about the type and amount of service customers purchase, not the names and addresses of customers themselves. Second, it should clarify that the new "win-back" rule would

not apply until after a customer is no longer receiving service from its original carrier. These clarifications are consistent with the language and purpose of Section 222 and will eliminate uncertainty about the scope of the new rules' application to wireless services.

CTIA asks that this Request be granted as soon as possible, and in any event long before the current May 26 effective date. CMRS carriers cannot wait until the last minute to learn whether their marketing programs must be stopped. Unlike many landline carriers, CMRS providers have never been subject to restrictions on their use of CPNI. They face having to dismantle targeted marketing efforts that serve the public interest and advance key Commission policies. There is no public interest reason to force that result to occur, and every reason to prevent it.

II. BACKGROUND: ADOPTION OF THE NEW CPNI RULES

Section 222 of the Communications Act[3] governs the use and disclosure of CPNI by all telecommunications carriers. That section seeks to achieve and balance both pro-competitive and customer privacy goals. Order at ¶ 3. The Order promulgates

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[3] 47 U.S.C. § 222. This provision was added to the Communications Act by Section 702 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

extensive new rules intended to implement Section 222. This Request concerns the Commission's treatment of only one provision of Section 222, and only insofar as it applies to CMRS. Subsection 222(c)(1) states:

> Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its pro-vision of (A) the telecommunication service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

The Commission implemented this provision by adopting what it termed a "total services approach" in which "we permit carriers to use CPNI, without customer approval, to market offerings that are related to, but limited by, the customer's existing service relationship with their carrier." Order at ¶ 4. The Commission recognized three categories of service – CMRS, local and interexchange – and limited the use of CPNI to the types of service to which the customer had subscribed.

The Commission recognized that CMRS and landline services should be distinguished in applying Section 222(c)(1). It then, however, abandoned that distinction in defining what constituted

"CMRS," and instead grafted landline concepts onto CMRS. The Order declares that "CMRS" does not include "CPE" or "information services," but only "basic" and "adjunct to basic services" – even though these terms have had no significance for mobile services, and even though wireless equipment and a wide variety of wireless offerings have always been part of the CMRS carrier-customer "existing service relationship." The rule appears to provide that a CMRS provider may access a customer's service usage records to market digital service, but not to market the digital phone that is essential to receiving that service. Section 64.2005(b)(1) states:

> A telecommunications carrier may not use, disclose, or permit access to CPNI derived from its provision of local service, interexchange service, or CMRS, without customer approval, for the provision of CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services.

A second rule, Section 64.2005(b)(3), prohibits use of CPNI to market even the narrowly-defined "CMRS" in a situation where such marketing is clearly pro-competitive. As soon as a CMRS customer advises its carrier that it is changing carriers, the rule appears to prevent the original carrier from accessing the customer's CPNI for use in retaining or winning back that

customer – even if that CPNI would be used to offer the customer lower rates or other pro-competitive incentives not to switch. Section 64.2005(b)(3) states:

> A telecommunications carrier may not use, disclose or permit access to a former customer's CPNI to regain the business of the customer who has switched to another service provider.

Sections 64.2005(b)(1) and (3), and the other CPNI rules, are scheduled to take effect 30 days after Federal Register publication, that is, on May 26, 1998. Order at ¶ 261. CTIA intends to seek reconsideration of these two provisions, and/or to petition under Section 10 of the Act for "forbearance" from their enforcement as to mobile services. Absent a change of the effective date, however, CMRS providers must radically alter longstanding marketing efforts now, even if petitions for reconsideration or forbearance are filed.

III. WHERE, AS HERE, NEW RULES RAISE PUBLIC INTEREST CONCERNS AND LACK AN ADEQUATE RECORD BASIS, THE EFFECTIVE DATE SHOULD BE DEFERRED.

The Commission has authority to specify an effective date for new rules, and to change that date at a later time. While the Administrative Procedure Act states that the effective date

for substantive rules may generally be no sooner than 30 days after the rules are published in the Federal Register,[4] neither that statute nor the Communications Act restricts the Commission from setting a later date, or from postponing the original effective date.[5] Section 1.103(a) of the Rules expressly provides for designating a later effective date in response to a request from any party.[6] The Commission has frequently used this authority to specify much longer periods before new rules take effect than the 30-day minimum prescribed by law.[7] It has also

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4 5 U.S.C. § 554(d).

5 Some provisions of the Communications Act require the Commission to adopt rules by a certain date. For example, Section 251(d) required interconnection rules to be adopted within six months of the date of the Act, and Section 254(a) required the universal service proceeding to be completed within 15 months. Section 222, in contrast, sets no deadline for adopting CPNI rules.

6 Section 1.103 states in part, "The Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action." The Commission adopted Section 1.103 to make clear that it "has broad discretion to designate the effective dates of its actions." Addition of New Section 1.103 to the Commission's Rules of Practice and Procedure, 49 RR 2d 225, 226 (1981).

7 Even in this Order, the Commission specified a compliance date of eight months after public notice for the new rules governing carriers' internal control and use of CPNI. See also Amendment of the Commission's Rules to Establish Competitive Service Safeguards for LEC Provision of Commercial Mobile Radio Services, 12 FCC Rcd 5668 (1997) (effective

(continued...)

postponed the original effective date in response to concerns raised as to new rules.[8] In these situations, the Commission has not applied the four-part test used to evaluate requests for injunctive relief, but has instead relied on its discretion to set compliance deadlines.

Even where the Commission has granted an indefinite stay of new rules, it has frequently not required that the four-part test for injunctive relief be met.[9] Instead, it decided that,

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date of 70 days following publication); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, 11 FCC Rcd 18676 (1996) (one year); Policy and Rules Regarding Calling Number Identification Service-Caller ID, 9 FCC Rcd 1264 (1994) (one year).

[8] E.g., Policy and Rules Regarding Calling Number Identification Service-Caller ID, 10 FCC Rcd 13796 (1995)(extending deadline by seven months); Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, 11 FCC Rcd 17512 (extending deadline by ten months).

[9] E.g., Policy and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 11 FCC Rcd 856 (1995) ("PIC Change Order") (rule stayed "to develop a complete record upon which we can conduct a meaningful cost-benefit analysis and make a more informed decision"); Policies and Rules Concerning Local Exchange Carrier Verification and Billing Information for Joint Use Calling Cards, 8 FCC Rcd 6393 (1993) (effective date stayed); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Service, 8 FCC Rcd 8135 (1993) (rules stayed "in order to permit the character reporting requirements to be considered more fully on reconsideration"); Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals, 2 FCC Rcd 1176 (1987) (effective date of must carry rules stayed (continued...)

given concerns raised as to whether the imminent effective date served the public interest, further development of the record would ensure that the concerns were considered. In any event, whether petitions for indefinite stay are considered under the four-part test, that test is clearly not required when the Commission merely changes an effective date.[10]

Changes to the effective date of new rules have, moreover, been made on delegated authority rather than by the full Commission. Last month, for example, the Common Carrier Bureau postponed the effective date of new rules requiring independent LECs to provide interexchange services through a separate

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(...continued)

to address cable system concerns). None of these orders deferring a compliance date addressed the four-part injunctive relief test.

[10] Even were the Commission to change its practice and apply the four-part test for indefinite injunctive relief here, that test is met. First, a stay will serve the public interest because it will allow the public to continue to benefit from integrated CMRS marketing efforts and customer retention programs, and will promote competition and lower prices. Second, no one will be injured by a stay. CMRS customers have in fact benefited from practices that would, absent a stay, be made illegal, and they expect the very types of marketing efforts that have now been restricted. Third, CMRS providers and customers will be irreparably injured if a stay is not granted because the rules will disrupt these marketing programs and prevent providers from serving and maintaining their customer base. Fourth, the language of Section 222(c)(1) does not, as the Order finds,

(continued...)

affiliate.[11] The Bureau did not address the four-part standard, but based its action solely on the finding that deferring the compliance deadline "is in the public interest."

Changing the effective date is also justified here, given the clear public interest benefits of CMRS practices that the rules would prohibit and the rules' lack of record support.

First, deferral will preserve the status quo and thus prevent disruption of pro-competitive, and pro-consumer, CMRS marketing efforts. Technology and free market forces have resulted in CMRS equipment and information services being offered as an integrated, inseverable part of mobile service offerings, and the Commission has found that such practices serve the public interest. CMRS providers' efforts to retain customers who plan to switch to a competitor are contributing to the steady decline in CMRS prices. New Sections 64.2005(b)(1) and (b)(3) will, however, inhibit these beneficial practices and thereby subvert the public interest. Part IV of this Request

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(...continued)

compel the way in which Sections 64.2005(b)(1) and (3) apply to CMRS providers.

11 Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Order, CC Docket No. 96-149, DA 98-556, released March 24, 1998 (Chief, Common Carrier Bureau).

shows why postponing the effective date for 180 days would serve the public interest.

Second, there is no record basis for the Commission's narrow definition of "CMRS" to exclude mobile equipment and wireless information services. The key premise of the Commission's approach to implementing Section 222 was that carriers could freely use CPNI where there was an "existing service relationship." The Order (at ¶ 23) declared:

> We believe that the language of Section 222(c)(1)(A) and (B) reflects Congress' judgment that customer approval for carriers to use, disclose and permit access to CPNI can be inferred in the context of an existing customer-carrier relationship. This is so because the customer is aware that its carrier has access to CPNI, and, through subscription to the carrier's service, has implicitly approved the carrier's use of CPNI within that existing relationship.

There was, however, no record evidence to support the Order's conclusion that mobile handsets and information services delivered through those handsets were outside the CMRS carrier-customer "relationship." The lines that the Commission drew to circumscribe the use of wireless CPNI were transported from the different technical, competitive and historical considerations as to landline services. There were no facts about CMRS; there is nothing in the record that would enable the Commission to

define the CMRS "existing service relationship." The Order consequently did not discuss either CMRS customer expectations, or the unique problems and disruptions to carriers and consumers that will result from Sections 64.2005(b)(1) and (3). Post-poning the effective date will allow the necessary record to be developed.[12]

Although the new rules permit CMRS carriers to use CPNI to market equipment and information services and to win back customers upon obtaining prior customer approval, that option is not feasible for CTIA's members. The affirmative approval requirements of the rules require CMRS providers to obtain permission from each individual customer. Since CMRS providers (unlike many landline carriers) have never been subject to CPNI-related disclosure programs, they must construct those programs from scratch. CMRS providers know from years of competitive marketing experience that any customer communication program takes many months before even a percentage of customers respond, and many will never bother to do so. Moreover, the rules are scheduled to take effect in 30 days. It is impossible for CMRS

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[12] See PIC Change Order, supra, 11 FCC Rcd at 857, where the Commission based a stay of the effective date of new rules on the potential disruption to carriers' existing practices and the benefits of developing a more complete record.

providers to obtain any response to CPNI affirmative disclosure programs in that brief period.[13] Postponing the effective date for 180 days would avoid these harmful and unnecessary results.

IV. DEFERRAL SERVES THE PUBLIC INTEREST BECAUSE IT WILL ALLOW CMRS CONSUMERS TO CONTINUE TO BENEFIT FROM PRO-COMPETITIVE MARKETING AND CUSTOMER RETENTION EFFORTS.

A. Integrated Marketing of CMRS Equipment and Services Benefits the Public Interest.

Product integration is now and has always been a fact of life in the mobile services industry. It is a key component to the stunning growth of the industry. New Section 64.2005(b)(1), however, drives a wedge directly through integrated CMRS offerings, by forcing carriers to segregate their marketing of equipment and the wide array of features and services they offer. It will impede the rapid growth of CMRS that the Commission has championed. The rule ignores the technical reasons and consumer expectations that have led to the high degree of integration. And it conflicts with the Commission's

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[13] Although the Commission refused to permit negative option or opt-out approval programs for CPNI, it again did not consider the particular benefits and costs of its affirmative approval rule for CMRS. It did not address whether differences in the carrier-customer relationship for mobile services as compared to landline services warranted a different approach.

own prior findings as to the benefits to competition and consumers that flow from integrated CMRS offerings. A change to the rule's effective date will allow these benefits to continue while the Commission reexamines its treatment of CMRS.

1. The Rule Is Incompatible With CMRS Technology. Unlike landline telephone service, in which "CPE" and "information" services are generally sold independently of the "basic" service, wireless equipment and transmission service is technically inseparable, and customers expect that they will be offered service and equipment together. The handset is itself a radio transmitter which must be service-activated and programmed with unique information for each subscriber, such as the Mobile Identification Number ("MIN" or "IMSI"), Electronic Serial Number ("ESN") and authentication or other security codes to prevent fraud. The subscriber does not obtain service without obtaining his or her personal transmitter, and the use of the transmitter requires subscription to a mobile service. The carrier is, moreover, selling not merely a phone, but the programming and other services necessary to initiate use of the phone.

The deployment of high-quality digital mobile services illustrates why integrated marketing of service and equipment is technically essential. Digital service <u>requires</u> a digital handset; an analog phone will not work. Broader use of digital

technology thus depends on carriers' ability to market digital handsets as part of the digital service offered to customers. Yet Section 64.2005(b)(1) appears to build a wall between the use of CPNI to sell a customer digital service, and the use of that same CPNI to sell the same customer the phone that he or she needs. This makes no sense and clearly disserves customers' interests.

Mobile technologies also integrate a variety of related services such as directory assistance, call forwarding, roaming, and messaging, which have always been offered and purchased with the underlying cellular or other mobile service. Digital technology provides the capability for many new features that can provide information and data to customers. The same radio spectrum is used; the same handset is used. Much of the CMRS market is being built on state-of-the-art voice mail, data and information delivery technologies. Carriers in this highly competitive market differentiate themselves by investing in and offering these latest technologies.

Section 64.2005(b)(1), however, also imposes a wall between the sale of different services based on whether or not they are "basic," "adjunct to basic," "enhanced," or "information" services. It thus permits a wireless carrier to access a customer's CPNI to determine whether to market short messaging

service, but not to tell that same customer about voice mail, a service that is equally integrated into the carrier's service offering. This unnatural demarcation, which neither wireless technology nor customers recognize, undermines carriers' ability to differentiate their offerings, frustrates customers' access to improved CMRS services, and impairs wider use of new technologies - all counter to Commission objectives.

2. The Rule Undermines Basic Commission Policies Toward CMRS. Section 64.2005(b)(1) also conflicts with at least five CMRS policies that the Commission has adopted because they serve the public interest. The Order does not consider this serious problem at all.

First, the Commission has held that there are "significant public interest benefits associated with the bundling of cellular CPE and service," finding that "bundling is an efficient promotional device which reduces barriers to new customer and which can provide new customers with CPE and cellular service more economically than if it were prohibited."[14] Both the Justice Department and the Federal Trade Commission endorsed the benefits to consumers, competition and lower prices from

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[14] Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1992) ("Bundling Order").

bundling of mobile services and equipment. The FCC, DOJ and FTC all concluded that consumers not only expect, but benefit from, bundling.[15] The new rule, however, undermines those benefits, based on contrary (and unsupported) assumptions about what consumers "expect."

Second, the Commission has touted the benefits of investments in spectrum-efficient digital technologies, and has encouraged CMRS carriers to build out digital systems. [16] Carriers have done so, but need digital service customers in order to recoup the massive costs of this buildout. Expansion of digital service requires customers to upgrade their handsets. By severing the sale of digital service from digital equipment, the rule impairs broader purchase and use of digital service, and thus subverts this Commission goal.

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[15] The Commission found that the high cost of handsets impeded expansion of cellular service, and that by permitting bundling, more customers would subscribe. This analysis proved correct -- bundling has allowed carriers to offer phones at extremely low prices. Now, however, Section 64.2005(b)(1) impedes this practice. In the name of protecting CMRS consumers, the rule in fact injures them.

[16] E.g., Bundling Order, supra, 7 FCC Rcd at 4031; Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 4957 (1994) (noting benefits to consumers and spectrum efficiency of digital technologies).

Third, the Commission has encouraged "seamless" mobile service so that customers may make and receive calls with their handsets wherever they travel.[17] PCS providers have begun marketing "dual mode, dual band" handsets that promote seamless service, because these handsets enable PCS customers to complete calls using cellular systems' spectrum in areas where technically compatible PCS service is not available. But the rule impairs this beneficial trend by restricting PCS carriers from using service-related CPNI to market dual mode phones.

Fourth, the Commission has repeatedly found that "one-stop" shopping in which wireless customers can purchase at the same time both equipment and CMRS service serves the public interest.[18] The new rule undercuts the efficiencies to both customers and carriers of wireless one-stop shopping. Worse, it was adopted without any record evidence or analysis as to how

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[17] For example, the Commission requires all CMRS providers to offer "roaming" to CMRS subscribers of other carriers, because it has found that roaming advances the public interest goal of "nationwide, ubiquitous, and competitive wireless voice communications." Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd 9462 (1996).

[18] The Commission proclaimed the public benefits of combined offerings to cellular customers in Craig O. McCaw, 10 FCC Rcd 11786, 11795-96 (1995): "We believe that the benefits to consumers of 'one-stop shopping' are substantial. . . .

(continued...)